

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1716/2016  
IN  
WRIT PETITION NO. 3105/1995

Prakash Vithal Oshramkar

... Applicant

V/s.

Smt. Indirarani Ugrasen

... Respondent

Ms. Vaishali Benere with Mr. Kamlakar L .Koli for the Applicant  
Mr. A. R. Metkari, AGP for the Respondent Nos.1 and 2.  
Mr. P. J. Thorat for the petitioner.

**CORAM: K.K. TATED, J.**  
**DATED : AUGUST 25, 2016**

**PC. :**

1. Heard the learned counsel for the parties. The learned counsel for petitioner filed Affidavit-in-Reply dated 25.08.2016. Same is taken on record.

2. This application is made by original respondent No.3 for vacating interim relief dated 28.07.1995 passed by this court. Said order reads thus:

*“Heard.  
Rule.  
Ad-interim stay in terms of prayer in para 29(b).”*

3. The learned counsel for the applicant submits that the petitioners are misusing the order passed by this court about the stay. He submits that the petitioner filed the suit in the court of Small Causes

for eviction against the applicant. She submits that the Dy. Collector (Encroachment) and competent authority Borivali, by order dated 13.09.1993 declared the land being CTS No.35/part of village Kurar and CTS No.345/195 to 216 of village Kurar, Tq. Borivali as slum area as required u/s. 4(i) of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (said Act). She submits that the said order was challenged by the petitioners before the Maharashtra Slum Area Board Mumbai in appeal No.98/1994, which was dismissed by order dated 03.06.1995 confirming the Government Gazette dated 14.10.1993. Hence, the petitioner filed the present Writ Petition. Same was admitted by this court and granted ad-interim relief.

4. The learned counsel for the applicant submits that without obtaining permission from the competent authority as required u/s.22 of the said Act, the petitioner is proceeding with their suits before the court of Small Causes and executing the decree. In support of this grievance the applicant is relying on paragraph 3 of the Civil Application. She submits that this court, by order dated 16.09.2013 in Civil Application Nos.1384/2013 and 1385/2013 expedited hearing of the Writ Petition. She submits that though the order was passed by this court on 16.09.2013, the Registry has not placed the Writ Petition for final hearing. Hence, Civil Application may be allowed in terms of prayer clauses (a) and (b).

5. On the other hand, the learned counsel for the petitioner vehemently opposed the Civil Application. He submits that earlier the applicant made Civil Application No.5286/1996 for same relief i.e. for

vacating ad-interim relief dated 28.07.1995. He submits that in that Civil Application the applicant made following reliefs:

*“(a) For vacating the ad-interim stay which was granted on 28.07.1995. In the circumstances, the applicants pray that the respondent No.1 (original petitioners) be ordered and directed to add the applicants as party respondents and make consequential amendments in the petition as per Schedule-I.*

*(b) The applicants further pray that it is just and necessary that the ad-interim stay be vacated and/or the petitioner be restrained from proceeding with the suits against the respondent as mentioned in paragraph 4 hereinabove except in due process of law.*

*(c) For such further and other order and direction in the nature and circumstances of the case, this Hon'ble Court may deem fit and proper.*

*(d) For costs of these proceedings.”*

6. The learned counsel for the petitioner submits that this court, by order dated 31.01.1997 directed the petitioner to join the applicants in that application, as respondent, in the present Writ Petition. He submits that this court has not granted any other relief as claimed by the applicant. Hence, the Civil Application for the same cause of action is not maintainable. He submits that the applicant made Civil Application No.1384/2013 and 1385/2013 for direction against the petitioner to restore possession of the premises described as room No.10 Chawl No.2, Indira Colony, Kurar Village, Malad (E), Mumbai -400097 and other reliefs. He submits that this court, by order dated 16.09.2013 declined to grant the said relief except expediting hearing of the Writ Petition. Hence, the Civil Application is not maintainable at all. Therefore, it is liable to be dismissed with costs.

7. Heard both sides at length. It is to be noted that in view of subsequent development i.e. order dated 31.01.1997 in Civil Application No.5286/1996 and order dated 16.09.2013 in Civil Application No.1384/2013 and 1385/2013, the applicant is not entitled for prayer clause (a) at present.

8. In respect of prayer clause (b), this court, by order dated 16.09.2013 already expedited hearing of the Writ Petition

9. In view of the above mentioned submissions, following order is passed:

(a) Prayer clause (a) of the Civil Application for vacating the interim stay dated 28.07.1995 is rejected.

(b) Office is directed to place the Writ Petition No.3105/1995 for final hearing in weekly board as per its turn in expedited matters as per order dated 16.09.2013 in Civil Application No.1384/2013 and 1385/2013.

(c) Civil application stands disposed off accordingly.

**(K.K. TATED, J.)**